IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2536 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ANIRUDH NARAIN AGRAWAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2536 of 1997
MR ARUN H MEHTA for Petitioner Nos. 1-2
MR K.C.SHAH, APP for Respondent No. 1
MR JM PANCHAL with MR K.J.PANCHAL for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of Order: 20/06/2002

ORAL ORDER

In this petition which is filed under Section 487

of the Code of Criminal Procedure, 1973 ('the Code' for short), petitioners against whom Criminal Case No. 3456 of 1997 has been registered in the Court of Judicial Magistrate First Class, Gandhinagar wherein the process has been issued, have prayed to issue appropriate writ, order or direction to quash and set aside Criminal Case No. 3456 of 1997 of the file of Judicial Magistrate First Class, Gandhinagar and also quash the process issued therein, on the grounds stated in the petition.

2. The petitioner No. 1 is the husband of respondent No.2 whose marriage has been solemnized on July 4, 1995 at Mount Abu, Rajasthan and thereafter both of them were staying in Agra (UP) on the address mentioned in the cause title of the complaint. It is alleged against the petitioners that after the marriage of petitioner No.1 with respondent No.2, mental and physical cruelty has been meted out by both the petitioners to respondent No.2 that is the complainant. It is also alleged against the petitioners that both of them have demanded dowry from respondent No.2 as well as her parents. Therefore, respondent No.2 has filed Criminal Case No. 3456 of 1997 against both the petitioners for commission of the alleged offence under Section 498 (A) of IPC and under Section 4 of the Dowry Prohibition Act, 1961. It is the say of the petitioners that on reading of the said complaint, it is clear that the alleged incidence of cruelty as well as demand of dowry took place at Agra which does not fall within the territorial jurisdiction of Gandhinagar. The petitioners have highlighted in para 4 of their petition showing that all the incidents took place at Agra and, therefore, the learned Judge of the Gandhinagar Court has no territorial jurisdiction to try the said complaint and, therefore, it is prayed that the complaint is required to be quashed by allowing the petition.

3. I have heard Mr. A.H.Mehta, learned Senior counsel for the petitioners and Mr. J.M.Panchal, learned counsel who is assisted by Mr. K.J.Panchal, learned counsel for respondent No.2 and Mr. K.C.Shah, learned APP for respondent No.1.

4. Mr. A.H.Mehta, learned Senior Counsel for the petitioners contended that averments made in the petition itself are eloquent and speak volumes about the fact that all the alleged incidents have taken place at Agra that is outside the territorial jurisdiction of Gandhinagar. He further states that petitioners have narrated in para 4 vide clause (a) to (p) how the alleged incidents have taken place at Agra, therefore, the Court at Gandhinagar

has no territorial jurisdiction to inquire and try the criminal complaint no. 3456 of 1997. He, therefore, urged that the said criminal complaint is required to be quashed and accordingly it may be quashed and petition may be allowed.

5. Mr. J.M.Panchal, learned counsel for respondent No.2 has drawn the attention of this Court to the judgement of the Supreme Court in the case of TRISUNS CHEMICAL INDUSTRY V. RAJESH AGARWAL AND OTHERS, 1999 CRI.L.J.4325 to canvass the proposition that complaint cannot be quashed on the ground that JMFC has no territorial jurisdiction to take cognizance of the offence alleged and to issue process as the power of JMFC to take cognizance of offence is not impaired by territorial restrictions.

6. Referring to the said judgement, Mr. Panchal learned counsel contended that even the alleged offence which has been committed outside the jurisdiction of Gandhinagar, to quash the complaint on that ground is too premature as the jurisdiction aspect becomes relevant only when the question of enquiry or trial arises. According to Mr. Panchal, learned counsel, it is therefore, a fallacious thinking that only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. He, therefore, urged that contention which is canvassed on behalf of the petitioners is devoid of merits in view of the pronouncement of the Supreme Court judgement in the case of TRISUNS CHEMICAL INDUSTRY V. RAJESH AGARWAL (supra).

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the memo of the petition as well as the allegations made in the complaint and the judgement cited at the bar by Mr. J.M.Panchal, learned counsel for respondent No.2.

8. At the outset, be it stated that in para 4 of the petition, petitioners have highlighted point Nos. (a) to (p) wherein it is sought to be canvassed that all the alleged incidents have taken place at Agra. Therefore, on perusal of the complaint, it can be noticed that all the alleged incidents have taken place at Agra. However, in view of the judgement of the Supreme Court in the case of TRISUNS CHEMICAL INDUSTRY V. RAJESH AGARWAL (supra), this Court cannot quash the complaint on the ground that JMFC has no territorial jurisdiction to take cognizance of the offence alleged and to issue process. The Supreme Court in the case of TRISUNS CHEMICAL INDUSTRY V. RAJESH

AGARWAL (supra) has held as under:

"It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chap. XIII of the Code relates to jurisdiction of the criminal Courts "in enquiries and trials". That chapter contains provisions regarding the place where the enquiry and trial are to take place. S.177 says that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed." But S.179 says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a Court "within whose local jurisdiction such thing has been done or such consequence has ensued". It cannot be overlooked that the said provisions do not trammel the powers of any Court to take cognizance of the offence. S.193 imposes a restriction on the Court of Session to take cognizance of any offence as a Court of original jurisdiction. But "any" Magistrate of the First Class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not. The only restriction contained in S.190 is that the power to take cognizance is "subject to the provisions of this Chapter". There are 9 Sections in Chap.XIV most of which contain one or other restriction imposed on the power of a first class magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier. The High Court, without considering any of the aforesaid legal aspects rushed to the erroneous conclusion that the "judicial magistrate of first

> class, Gandhidham has no power to take cognizance of the offences alleged" merely because such offences could have been committed outside the territorial limits of the State of Gujarat. Even otherwise, without being apprised of the fuller conspectus a decision on the question of jurisdiction should not have been taken by the High Court at a grossly premature stage in a petition under S.482 for quashing complaint."

9. In view of the aforesaid clear elucidations of the Supreme Court, there is no manner of doubt that the complaint cannot be quashed on the ground that JMFC has no territorial jurisdiction to take cognizance of the offence alleged and to issue process, therefore, it would be open for the petitioners to raise the said plea before the learned Magistrate before whom Criminal Case No. 3456 of 1997 is pending, during inquiry of the trial.

10. Seen in the above context, there is no substance in the petition which is deserve to be dismissed.

11. For the foregoing reasons, petition fails and accordingly it is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated.

12. The learned JMFC before whom Criminal case No. 3456 of 1997 is pending for inquiry and trial shall proceed with the same forthwith.

(A.M.Kapadia,J)

Jayanti*